

Office of Attorney General 2007-2009 BIENNIAL REPORT



Attorney General
Wayne Stenehjem

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OFFICE OF ATTORNEY GENERAL

THE AGENCY

The Attorney General is one of 12 statewide elected officials. The Office of Attorney General was established in the 1889 state constitution. The office is headed by the Attorney General, an independently elected constitutional officer.

The Office of Attorney General is organized into 13 divisions with specific duties and responsibilities: Administration, Bureau of Criminal Investigation, Civil Litigation, Consumer Protection and Antitrust, Criminal and Regulatory, Finance and Administration, Fire Marshal, Gaming, Information Technology, Natural Resources and Indian Affairs, Crime Laboratory, Lottery, and State & Local Government.

QUALIFICATIONS

To be eligible for election to the Office of Attorney General, an individual must be a licensed attorney, at least 25 years old, and qualified to vote in North Dakota.

BOARDS/COMMISSIONS

The Attorney General serves on numerous boards and commissions, including the Board of University and School Lands, Industrial Commission (which oversees all state-owned industries), Commission on Drug and Alcohol Abuse, PERS Board of Trustees, Judicial Council, and Pardon Advisory Board.

DUTIES AND FUNCTIONS

The Attorney General represents the state in all legal matters, civil and criminal, where the state is named as a party or the state may have an interest in the outcome of the litigation. The duties of the Attorney General are set out in several chapters of the North Dakota Century Code.

North Dakota ATTORNEYS GENERAL

Wayne Stenehjem 2001-
M. K. "Heidi" Heitkamp 1993-2000
Nicholas Spaeth 1985-1992
Robert Wefald 1981-1984
Allen I. Olson 1973-1980
Helgi Johanneson 1963-1972
Leslie R. Burgum 1955-1962
Paul Benson 1954-1954
Elmo T. Christianson 1951-1954
Wallace E. Warner 1949-1950
P.O. Sathre 1948-1948
Nels G. Johnson 1945-1948
Alvin C. Strutz 1937-1944
P.O. Sathre 1933-1937
Arthur J. Gronna 1933-1933
James Morris 1929-1932
George F. Shafer 1923-1928
Sveinbjorn Johnson 1921-1922
William Lembke 1921-1921
William Langer 1917-1920
Henry Linde 1915-1916
Andrew Miller 1909-1914
Thomas F. McCue 1907-1908
Carl N. Frich 1903-1906
Oliver D. Comstock 1901-1902
John F. Cowan 1895-1900
William H. Standish 1893-1894
Clarence A.M. Spencer 1891-1892
George F. Goodwin 1889-1890

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600 E. Boulevard Ave
Dept. 125
Bismarck, ND 58505
(701) 328-2210
(701) 328-2226 (fax)
E-mail: ndag@nd.gov
Website: www.ag.nd.gov

Consumer Protection and Antitrust
4205 State Street
PO Box 1054
Bismarck ND 58502-1054
(701) 328-3404
Toll free (800) 472-2600

Bureau of Criminal Investigation
PO Box 1054
Bismarck ND 58502
(701) 328-5500
Tip Hotline (800) 472-2185

Gaming Division
17th Floor, Capitol Building
(701) 328-4848

Licensing Section
17th Floor, Capitol Building
(701) 328-2329

Fire Marshal
(701) 328-5555

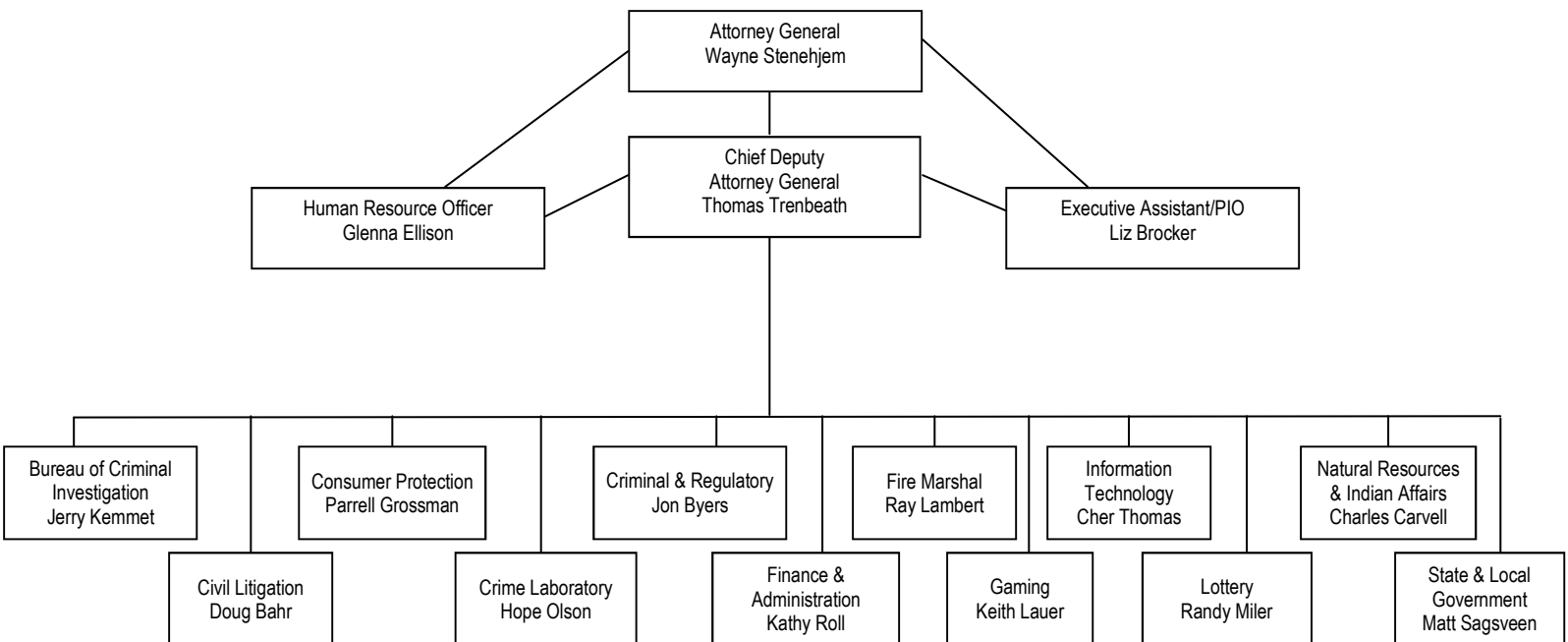
North Dakota Lottery
600 E. Boulevard Ave
Dept. 125
Bismarck, ND 58505
(17th Floor, Capitol Building)
(701) 328-1574
E-mail: ndlottery@nd.gov
Website: www.lottery.nd.gov

The Attorney General issues opinions on questions of law related to matters involving state statutes, the state constitution, and matters having statewide significance. The office provides legal services to state and constitutional officers, state agencies, boards, and commissions. The office enforces the open meetings and open records laws, and issues opinions in response to complaints that a public entity has violated those laws

In addition to its legal duties, the Office of Attorney General has several divisions with regulatory or investigative functions:

- The **Bureau of Criminal Investigation** assists local governments in criminal and drug enforcement investigations, maintains the criminal history and sex offender registration systems, and provides training for law enforcement officials.
- The **Consumer Protection and Antitrust Division** (CPAT) enforces the state's consumer fraud and do not call laws, investigates and prosecutes consumer fraud cases and enforces the state's anti-trust statutes.
- The **Fire Marshal's Office** conducts fire safety training and inspections, controls hazardous materials incidents, and investigates fires.
- The **Gaming** division regulates charitable gaming, and ensures compliance with tribal-state casino gaming compacts.
- The **Licensing** section regulates and issues certain wholesale, retail, and distributor licenses.
- The North Dakota **Lottery** division is responsible for the day-to-day operation of the lottery and its games.

ORGANIZATIONAL CHART



ADMINISTRATION

The Office of Attorney
General website is
www.ag.nd.gov

The Administration Division is responsible for providing personnel support services, coordinating public education and information programs, and coordinating relations with state and local government officials and the legislative branch.

PUBLIC INFORMATION

❖ CONSTITUENT RESPONSES

In addition to thousands of telephone calls received by the Office of Attorney General dealing with everything from requests for general information to referrals to other government entities, the public information office responded to 1839 e-mails and 365 letters from citizens. The average response time was 1.5 days.

❖ PUBLICATIONS

During the biennium, the division continued its efforts to provide the public with useful information regarding the Office of Attorney General and state government in general. The office also continued to prepare and offer information and publications to the public on a variety of topics. These are listed at the end of this report in the “Publications” section.

❖ WEB ACCESS

The Office of Attorney General serves the people of North Dakota and is committed to providing instant access, via the Internet, to information and resources on a variety of issues, including:

- Information about sex offenders, through the state’s Sex Offender website, www.sexoffender.nd.gov;
- Scams, frauds, security freeze, do not call registration and other consumer information;
- Concealed weapons permits;
- Information about the North Dakota Lottery and lottery games, at www.lottery.nd.gov.

- The state's open record and open meetings laws and Attorney General Opinions;

During the biennium, the agency expanded its existing searchable database of Attorney General Opinions to include advisory letters and opinions going back to 1942.

AGENCY INITIATIVES

❖ **24/7 SOBRIETY PILOT PROGRAM**

The 2007 Legislature authorized the Attorney General to establish a 24/7 Sobriety Program, designed to keep drunk drivers off the road, in one or more judicial districts of the state. The pilot program rolled out in January 2008 in the twelve counties of the South Central Judicial District.

Under the program, individuals who are arrested for a 2nd or subsequent DUI are required to complete breath alcohol testing twice a day as a condition of bond. As the arrestee is responsible for the costs of testing (\$1.00 each time), the program is largely self-funded.

Over 98% of the participants in the pilot program successfully completed it. The program quickly gained the support of law enforcement, the courts, and participants, and as a result, was funded by the 2009 Legislature for expansion throughout the state during the 2009-2011 biennium.

❖ **INTERNET LURING UNIT**

The 2007 Legislature authorized one additional full time agent for computer forensic investigations, bringing the total to three. These specialized agents investigate Internet crimes, particularly Internet luring and other Internet crimes against children. The Bureau of Criminal Investigation works with 22 local law enforcement agencies and state's attorneys to investigate and prosecute these crimes. The Internet Luring Unit has a 98% conviction rate. The unit also provides training and equipment to local agencies to aid in the investigation and prosecution of these crimes.

"The **24/7 Sobriety program** is designed to stop repeat DUI offenders from continuing to drink and drive," said Attorney General Stenehjem. "A condition of bond will be that they cannot drink alcohol. If they do, the breath test will show it and they will be taken directly to jail. This program will make our streets safer for everyone."

The Drug Endangered Children Committee was formed in 2005 to develop uniform procedures to coordinate state and local agency resources and services for drug endangered children. The committee completed its work during the biennium, producing written protocols for distribution.

2009 LEGISLATION

The 2009 Legislature passed several bills which directly or indirectly affected the Office of Attorney General, including:

- **HB 1184: ID Theft Reports.** Expanded legislation passed in 2007, to permit a victim of identity theft to file a report with local law enforcement even if jurisdiction lies elsewhere.
- **HB 1306: 24/7 Sobriety Program.** Expanded the pilot program statewide, added participation as a condition of parole/probation; provided for temporary restricted driver's license for purposes of testing.
- **HB 1308: Security Credit Freeze.** Amended statute to reduce the amount of time to 15 minutes (for phone or electronic requests) or 2 business days (mail requests) during normal business hours (excluding acts of God) within which the freeze/thaw must be made.
- **HB 1416: Adam Walsh Act Compliance.** Expanded Attorney General administrative subpoena powers for internet luring investigations; requires all warrants be entered in the Central Warrant Information System but law enforcement may specify the area of extradition.
- **SB 2209: Human Trafficking.** Prohibits human trafficking for labor, sex or drugs; requirement to register as "offender against children" if victim under 18.
- **SB 2216: Forensic Medical Examinations.** Expanded legislation passed in 2007 to add reimbursement for the pre-screening examination and for the cost of non-acute child sexual assault examinations.
- **SB 2218: Justin's Law.** Requires face-to-face prescribing of certain controlled drugs.
- **SB 2415: Concealed Weapon Reciprocity.** In an effort to increase the number of states with which ND has reciprocity, the bill created a 2-tier permit system; existing permits converted to a Class 2, while a new Class 1 permit requires completion of a proficiency test.

DEFECTS IN THE PRACTICAL OPERATION OF THE LAW RELATING TO CRIMINAL OFFENSES

The Attorney General identified several areas in the practical operation of the criminal law that merit consideration for amendment by the 2011 Legislature:

- Although Section 504 of the Adam Walsh Child Protection and Safety Act prohibits the copying and distribution of child pornography images as a part of discovery in federal cases, no similar provision prevents such distribution during discovery in state criminal cases. The Attorney General will recommend that the Supreme Court's Joint Procedures Committee amend Rule 16, North Dakota Rules of Criminal Procedure, to require that any material that constitutes child pornography, or forensic medical examination photographs or video, shall remain in the care, custody, and control of either the government or the court. The materials would be made available for inspection, examination, or viewing by the defense counsel or his expert at a government facility.
- The statute of limitations for the crime of possession of stolen property should be amended to allow prosecution within two or three years of when law enforcement discovers that a person is in possession of the property. Unfortunately, current ND case law requires that a charge be filed within two or three years of the theft.
- The penalties for theft of prescription medications need to be increased. When the penalty is based only on the value of the medication, the offense is typically a class B misdemeanor.

Criminal penalties and sentences are contained within N.D.C.C. Ch. 12.1-32.

During the biennium, the Attorney General issued 22 news releases relating to current scams affecting the state's residents and enforcement actions against entities which had violated the state's consumer fraud laws.

IN THE NEWS

The Office of Attorney General issued news releases on a variety of issues and distributes them to media from North Dakota and the United States, legislators, state officials and members of the public who have asked to receive such information. All news releases and consumer alert releases are posted to the agency's website.

- STENEHJEM OBTAINS INFORMATION FROM MYSPACE (August 1, 2007): <http://www.ag.nd.gov/NewsReleases/2007/08-01-07.pdf>
- GROUND BREAKING FOR NEW STATE CRIME LAB (October 4, 2007): <http://www.ag.nd.gov/NewsReleases/2007/10-04-07.pdf>
- STENEHJEM ANNOUNCES 24/7 SOBRIETY PROGRAM (December 19, 2007): <http://www.ag.nd.gov/NewsReleases/2007/12-19-07.pdf>
- STENEHJEM FINES UNLICENSED FARGO ROOFING CONTRACTORS (December 20, 2007): <http://www.ag.nd.gov/NewsReleases/2007/12-20-07.pdf>
- ATTORNEYS GENERAL CALL ON CONGRESS TO RESTORE FUNDING FOR CRIME AND DRUG ENFORCEMENT EFFORTS (March 3, 2008): <http://www.ag.nd.gov/NewsReleases/2008/03-03-08.pdf>
- GRAND OPENING FOR NEW STATE CRIME LABORATORY BUILDING (October 20, 2008): <http://www.ag.nd.gov/NewsReleases/2008/10-20-08.pdf>
- PREVENTING UNDERAGE DRINKING IS FOCUS OF JOINT CAMPAIGN (March 9, 2009): <http://www.ag.nd.gov/NewsReleases/2009/03-09-09.pdf>
- CORPORATE FARMING LAW RULED CONSTITUTIONAL (June 15, 2009): <http://www.ag.nd.gov/NewsReleases/2009/06-15-09.pdf>

BUREAU OF CRIMINAL INVESTIGATION

The Bureau of Criminal Investigation (BCI) is the law enforcement division of the Office of Attorney General. It assists local, state, and federal law enforcement agencies in criminal and drug enforcement investigations, maintains the criminal history and sex offender registration systems, provides training and licensing for law enforcement officials, and facilitates federal funding for many local law enforcement agencies. The division has 12 field offices which house criminal and narcotics agents who support local law enforcement agencies and provide smaller agencies a mechanism through which they may share resources and personnel.

❖ **POST SEIZURE ANALYSIS TEAM (PSAT)**

The Post Seizure Analysis Team (PSAT) continues to help law enforcement identify, investigate, and prosecute suppliers from out-of-state sources which typically involve conspiracies and several layers of networks. The PSAT facilitates information sharing among task forces, analysts across the nation, and the northern border International Border Enforcement Teams. It is a multi-agency team consisting of Border Patrol, Immigration and Customs Enforcement, BCI, and the North Dakota Highway Patrol. The PSAT is merging with the North Dakota Fusion Cell which collaborates with the FBI's Field Intelligence Group, and which utilizes the Department of Homeland Security's critical infrastructure sectors, and state and local partners regarding Homeland Security issues.

❖ **TRAINING**

The training section provides field training and assistance with academy training for law enforcement officers. In the 2007-2009 biennium, 103 training programs were presented to 2,248 students. In addition, the section conducts the law enforcement licensing for the Peace Officer Standards and Training (POST) Board. Members of the POST Board are appointed by the Attorney General and enforce minimum standards for the issuance and maintenance of peace officer licenses, including education and weapons qualification requirements.

BCI agents serve as coordinators and consultants for seven of the nine multi-jurisdictional narcotics task forces.

While methamphetamine (meth) has been the drug of choice during the past several years, it was involved in only 22% of BCI drug investigations in 2007-2009, down from 32% of the drug cases for the 2005-2007 biennium.

❖ **PUBLIC PRESENTATIONS**

Agents provided community awareness training about the signs of drug abuse and meth manufacture to 2,090 adults and children. Agents are current on the latest trends and can share anecdotal stories with the public that are extremely effective in demonstrating the danger of drugs.

❖ **INFORMATION SERVICES SECTION**

The Information Services Section includes a variety of systems that provide criminal justice agencies and the public with information critical to the protection and safety of the citizens of North Dakota. The systems include the state central repository for criminal histories which includes arrest and prosecution information for individual offenders; the Uniform Crime Reporting (UCR) program which compiles statistics on reported crimes and provides annual reports; the Central Warrant Information System (CWIS) which is available for law enforcement to record outstanding warrants, protection and restraining orders, etc.; and the Automated Fingerprint Identification System (AFIS).

❖ **AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM (AFIS)**

AFIS is a fingerprint matching system that compares newly-submitted arrest fingerprints against a fingerprint database. Work was completed on a full replacement of the Automated Fingerprint Identification System (AFIS). North Dakota is a partner with Minnesota and South Dakota in managing a regional AFIS. Given that all criminal history records are based on fingerprint matches, this system is a great tool to assist identification technicians in their daily work.

Latent prints from crime scenes may be submitted to the regional database for a possible match. If a match is not found, the latent print from an unsolved crime is retained and searched each time a set of prints is added to the database by any of the three states. During the 2007-2009 biennium, law enforcement officers throughout the state submitted 159 cases involving latent print examination for various offenses. Thirteen individuals were identified from the latent prints, including one cold hit, where there was either no suspect or someone was identified other than the individual originally suspected by law enforcement.

❖ **CONCEALED WEAPONS PERMITS**

Concealed weapon permit applications increased steadily during the 2007-09 biennium. During the biennium, 8,967 permits were issued, with the corresponding permit fees generating revenues of \$224,175.

The number of active concealed weapon permits grew by 46% from 8,300 last biennium, to 12,111 at the end of the 2007-09 biennium.

❖ **SEX OFFENDER REGISTRATION**

During the 2007-2009 biennium, the number of registered sex offenders increased from 1,015 to 1,236. Of those, as of the end of the biennium, only 18 were delinquent, which equates to a 99% compliance rate. A risk assessment committee reviewed data on each registered offender and determined each individual's risk assessment level as either low, moderate, or high. Through the biennium, 643 assessments were completed. At the end of the biennium, 314 offenders were identified as high risk, 435 as moderate risk, and 653 as low risk.

Sex Offender Website
www.sexoffender.nd.gov

North Dakota's sex
offender registration
compliance rate is 99%.

❖ **SIGNIFICANT CASES**

- A manhunt in the Drake, North Dakota, area culminated with the arrest of Jeremy Brooks, who was wanted for homicides in three states. Numerous agencies were involved in the manhunt which lasted over one week.
- The first completely self-contained underground meth lab to be seized in North Dakota occurred during this biennium in rural Cavalier county, North Dakota. The lab was connected by tunnels which ran from a quonset to a fish house which had been buried in a farmyard. The lab had been there for over one year.
- Three officer-involved shootings were investigated by BCI in 2007-2009; one in Dickinson, and two in Morton County. All officers involved were cleared of wrong doing.

CIVIL LITIGATION

The Civil Litigation Division recovered over \$4,735,593 for state agencies during the biennium.

The Civil Litigation Division represents state agencies, officials, and employees in legal actions, including administrative hearings, state court lawsuits, federal court lawsuits, and appeals. The attorneys handle cases ranging from challenges to the constitutionality of state laws to collection actions for various state agencies. The division strives to ensure that North Dakota laws are upheld and protects the interests of the State of North Dakota in the courts.

DIVISION CLIENTS

❖ **BANK OF NORTH DAKOTA**

The Attorney General represents the Bank of North Dakota in cases seeking to recover overdue loans or property from delinquent borrowers. During the biennium Civil Litigation Division legal staff represented the Bank in 4,534 home loan foreclosures, 9 home loan bankruptcies, 36 farm loan foreclosures, 27 farm bankruptcy cases, 6 student loan bankruptcy cases, and 2767 student loan collection actions. Through its efforts this biennium, the Office of Attorney General collected \$2,004,501.91 for the Bank.

❖ **DEPARTMENT OF CORRECTIONS & REHABILITATION/STATE PENITENTIARY**

The division represents the North Dakota State Penitentiary and penitentiary employees in state and federal court cases involving inmates' allegations of unlawful conduct by prison officials, including challenges to prison policies and civil rights actions. During the past biennium, Civil Litigation Division staff attorneys handled 36 such cases.

❖ **DEPARTMENT OF HUMAN SERVICES**

During the biennium, division attorneys represented DHS in 138 economic assistance, developmental disability services, and adoption cases and 110 child care licensing, child care protective services, and foster care cases.

❖ **DEPARTMENT OF TRANSPORTATION**

Civil Litigation Division attorneys represent the Department of Transportation in a variety of cases, including im-

plied consent, driver's license, condemnation, quiet title, and contract cases. During the biennium, division staff was involved in 302 district court and 23 North Dakota Supreme Court appeals relating to drivers licenses.

❖ **EMPLOYMENT**

Division attorneys represented **Job Service** in 23 state district court appeals and 2 North Dakota Supreme Court appeal involving grants or denials of unemployment benefits. Staff attorneys issued 672 unemployment tax complaints against employers who owed payments to Job Service, resulting in 217 judgments and the recovery of \$2,273,816.44. Division attorneys took legal action for Job Service to recover employee benefit overpayments in 1,659 cases, resulting in 691 judgments and collection of an additional \$457,276.46.

The division handled 78 wage claim cases for the **Labor Department** against employers who failed to pay their employees, recovering over \$64,500 for those employees. In addition to representing state agencies in employment cases, staff attorneys also defended matters appealed through the **Central Personnel Division**.

❖ **RISK MANAGEMENT FUND**

The division provides general counsel services to the Risk Management Fund and represents the State Risk Management Fund in litigation. In addition to assisting the Risk Management Fund in responding to and resolving many of the new claims filed during the biennium, staff defended the Risk Management Fund in 64 lawsuits.

SIGNIFICANT CASES OR MATTERS

❖ **SUPREME COURT DISCIPLINARY JURISDICTION**

Division staff are presently representing the North Dakota Disciplinary Board in a challenge to its jurisdiction. The plaintiff, a member of the Three Affiliated Tribes, is licensed to practice law by the state of North Dakota and the Fort Berthold District Court. The Disciplinary Board initiated disciplinary action against the plaintiff based on the

DISMISSAL OF LAWSUIT REGARDING DAKOTA BOYS & GIRLS RANCH.

The Freedom from Religion Foundation, Inc. and various North Dakota residents brought a suit against the State alleging that public entities' referral of children to the Dakota Boys & Girls Ranch violates the Establishment Clause of the First Amendment.

The State moved to dismiss the action on the ground the plaintiffs lacked standing. Accepting the State's argument, on July 16, 2008 the federal district court issued an order granting the State's motion and dismissing the case. The plaintiffs did not appeal the district court's decision.

AMICUS CURIAE

Amicus curiae or "friend of the court" briefs are filed by a state or other entity in a pending court case in which it is not a party. The briefs are designed to provide the court with information or a perspective that should be considered in the court's decision but that might not be presented to the court by the parties to the case.

The Civil Litigation Division monitors the requests the state receives from the attorneys general of other states or other entities to write or join these amicus briefs.

During the 2005-2007 biennium, the Office of Attorney General received 159 requests to write or join briefs amicus curiae, the majority of the briefs filed in the United States Supreme Court.

The Office of Attorney General joined or wrote briefs in 44 of these cases.

plaintiff's conduct on the Fort Berthold Indian Reservation. The plaintiff filed an action in federal court requesting the federal court enjoin the Disciplinary Board from pursuing the disciplinary action, arguing the Disciplinary Board, and thus the North Dakota Supreme Court, lacks jurisdiction to discipline the plaintiff based on his conduct on the Fort Berthold Indian Reservation. The Disciplinary Board moved to dismiss the Complaint. On January 14, 2009, the federal district court entered an order dismissing the Complaint. The district court found the North Dakota Supreme Court has jurisdiction to discipline the plaintiff. The matter is currently on appeal to the Eighth Circuit Court of Appeals.

❖ ECONOMIC DEVELOPMENT AUTHORITY

Division staff are defending a lawsuit against the North Dakota Department of Commerce that alleges the Department's disbursement of funds to private persons, associations, and corporations for economic development purposes violates Article X, section 18 of the North Dakota Constitution. The city of Minot, also named in the lawsuit, moved the case to federal court. Because the Complaint does not identify the specific statutes or programs being challenged, the Department filed a motion requesting the Complaint be dismissed or that the plaintiff provide a more definite statement of his claim.

❖ AUTHORITY OF ADJUTANT GENERAL

A significant case involving the North Dakota National Guard and the Adjutant General was decided by the North Dakota Supreme Court during the biennium. The case stemmed from the Adjutant General's order separating an officer from the North Dakota Air National Guard. The officer challenged the authority of the Adjutant General to separate him from the Air National Guard. The officer also argued the Adjutant General's order separating him from the Air National Guard was subject to the state administrative hearing process. The Adjutant General moved to dismiss the case, arguing the state administrative hearing process did not govern the Adjutant General's military personnel decisions. Rather, the Adjutant General argued, his military personnel decisions are governed by federal law and regulations.

The state district court denied the Adjutant General's mo-

tion, holding the state administrative hearing process applied to the separation and that the Adjutant General exceeded his authority in ordering the separation. The Adjutant General appealed.

In August of 2007 the North Dakota Supreme Court reversed the state district court. Agreeing with the Adjutant General, the Supreme Court held the state district court lacked jurisdiction to consider the officer's appeal because federal law, not state law, governed the separation decision and any review of that decision. Accordingly, the Supreme Court held the district court erred in deciding it had jurisdiction to hear the officer's appeal and erred in denying the Adjutant General's motion to dismiss the appeal.

❖ **UNIVERSITY OF NORTH DAKOTA (UND) SIOUX NAME & LOGO—UPDATE**

Detailed information about the case and its status through the end of the 2005-07 biennium is provided in the previous Report. In October 2007, while preparing for trial, the case was settled. Under the settlement, UND has until November 30, 2010, to seek and obtain approval from the Spirit Lake and Standing Rock Sioux Tribes to use the nickname and logo. If approval is not obtained, UND must transition to a new nickname and logo on or before August 15, 2011.

❖ **MASTER SETTLEMENT AGREEMENT (MSA) & NON-PARTICIPATING MANUFACTURERS (NPM) STATUTE ENFORCEMENT UPDATE**

An explanation of the Master Settlement Agreement (MSA) and the obligations of the settling states, the tobacco companies that signed the MSA, known as Participating Manufacturers (PMs), and the Non-Participating Manufacturers (NPM) is contained in previous biennial reports.

N.D.C.C. ch. 51 25, requires the NPMs to pay funds into an escrow account based upon the number of cigarettes sold in North Dakota. During the biennium, Civil Litigation Division staff spent substantial time enforcing the statute. Division staff also spent significant time enforcing the payment obligations under the MSA. Under the MSA, the PMs' an-

Civil Litigation Division attorneys represent numerous state professional licensing boards and commissions in a variety of cases, including appeals from the denial of applications, and disciplinary actions. Most cases are handled or resolved at the administrative hearing stage.

During the biennium, Civil
Litigation attorneys
participated in 40
arguments before the
North Dakota Supreme
Court, two arguments in
the Eighth Circuit Court of
Appeals, and numerous
arguments in other courts
and administrative
proceedings.

nual base payment amount is subject to several adjustments, including the NPM Adjustment. The MSA requires each Settling State (North Dakota and others) to pass a "Qualifying Statute" (N.D.C.C. ch. 51-25, Tobacco Sales Act) allowing the Settling State to collect escrow payments from the NPMs. Under the MSA, a Settling State's annual settlement payment cannot be reduced by the NPM Adjustment so long as that Settling State "diligently enforced" its Qualifying Statute.

North Dakota's total share of the settlement is expected to be **\$866 million**. Through the end of the biennium, the state had received a total of \$258,170,673.46 in settlement payments. Of that amount \$167,726,727.76 was received during the 2007-2009 biennium.

In April 2006, several PMs withheld approximately \$775 million from the Settling States, claiming an offset for the 2003 NPM Adjustment. While North Dakota's current share of the amount withheld by the PMs is approximately \$2.75 million, it is possible for North Dakota to lose its entire payment of approximately \$28 million.

In May 2006, the North Dakota Attorney General filed a motion in Cass County District Court, requesting a ruling that North Dakota diligently enforced its Tobacco Sales Act. In July 2006 the Cass County District Court denied the PMs' motion to compel arbitration of the diligent enforcement dispute. The PMs appealed and the North Dakota Supreme Court reversed, holding the MSA requires the diligent enforcement dispute be arbitrated.

Division staff is working with other Settling States to prepare for the multi-state arbitration, which will be held before three retired federal judges. The date, length, and location of the arbitration are currently unknown. The arbitration proceeding will involve all Settling States and could last a year or longer depending on the procedures adopted by the arbitrators.

CONSUMER PROTECTION & ANTITRUST

The Consumer Protection and Antitrust Division (CPAT) enforces the state's consumer fraud laws, investigates and prosecutes consumer fraud cases, mediates individual consumer complaints, enforces the state's do not call laws, is the state's clearinghouse for identity theft prevention, and educates the public on how to avoid becoming victims of fraud.

The division staff conducted 112 consumer fraud presentations and public appearances discussing consumer fraud issues. CPAT continued publication of its monthly consumer newsletter "Too Good To Be True," printed in newspapers throughout the state; issued news releases and consumer alerts; and participated in frequent radio and television appearances to talk about current consumer scams.

❖ **CEASE & DESIST ORDERS AND INJUNCTIONS**

During the biennium CPAT issued cease and desist orders against five businesses for fraudulent or illegal activity. These orders typically are issued in the event of blatantly fraudulent activity, or in circumstances that present imminent harm to consumers. The division also obtained court ordered injunctions against three businesses, suspending their business activities in North Dakota until they complied with the Attorney General's request for information.

❖ **IDENTITY THEFT**

The division provided 48 victims with identity theft affidavits to complete and file with the Office of Attorney General, credit reporting agencies, and creditors.

CPAT participated in an investigation concerning security breaches by data warehouses, credit card companies, or other entities collecting financial or confidential information, in order to ensure that the entity had not engaged in illegal or wrongful acts in violation of state or federal law.

Consumer Protection opened 2,543 complaints and investigations and closed 2,543 files.

CPAT recovered or collected **\$2,986,393.51** during the 2007-09 biennium, a **73%** increase from the previous biennium.

LIFESMARTS
The Consumer Protection continued its participation in the National Consumers League's "LifeSmarts" competition, a game show style. During the biennium, the Attorney General hosted the 12th and 13th state LifeSmarts competitions.

Ray High School, the 2008 winning team, participated in the national LifeSmarts competition in Minneapolis, Minnesota. Ray High School repeated its success in 2009, winning the state competition and going on to participate in the national LifeSmarts competition in St. Louis, Missouri.

INVESTIGATIONS/LEGAL ACTIONS

CPAT pursued numerous investigations or legal actions against individuals or entities under consumer protection, do not call, and other laws. The investigations resulted in 77 civil actions for violations of consumer fraud laws, a 32% increase over the previous biennium, and 37 civil actions for violations of do not call laws. The actions included violations of deceptive and misleading practices, false advertising, do not call, home solicitation sales, transient merchant, contractor, charitable solicitations, security breach, non-profit corporation, and antitrust laws.

CPAT's aggregated costs of prosecuting these actions was \$6,812.52. The Attorney General, through CPAT, collected \$1.4 million in fines, penalties, attorney's fees, and payments in lieu of civil penalties during the biennium.

❖ DO NOT CALL ENFORCEMENT

The Attorney General continues to pursue enforcement of the do not call laws through business and consumer education, investigations, and legal actions. During the biennium, the division received 208 complaints for solicitations to consumers registered on the national and state do not call registry, 225 complaints for pre-recorded messages, and four text message complaints. The division conducted 53 investigations and reached 37 settlements with total civil penalties collected in the amount of \$103,500.

In 2007 CPAT obtained a \$21,212.62 judgment against EMT Alert, Inc. for violations of the do not call laws. CPAT obtained an Order for Injunction & Order to Compel issued against National Auto Warranty Service, Inc in 2008.

CRIME LABORATORY

The Crime Laboratory provides scientific support to the state's criminal justice system through the analysis, identification, and comparison of physical evidence used in the investigation and prosecution of criminal offenses. Services provided by the Crime Lab include:

- Examination of physical and toxicological evidence for local, state, and federal law enforcement agencies, prosecutors, and defense attorneys.
- Equipment selection, inspection, repair, and training of law enforcement agents in breath alcohol analysis.
- Maintenance of a DNA database of convicted offenders and registered offenders.
- Providing expert testimony in court proceedings.

The Toxicology section held 20 classes and trained 368 law enforcement officers in the use of breath alcohol instruments. An additional 1,362 officers received certification for breath equipment remotely via the internet. Lab staff members maintained, supported, and certified 648 non-evidentiary and 74 evidentiary breath alcohol instruments for law enforcement agencies for a total of 4,841 breath alcohol cases statewide.

During the 2005-2007 biennium, the Crime Laboratory processed 13,309 cases: 6,609 blood alcohol (driving under the influence); 4,048 narcotics; 1,529 urine/blood drug screens; 525 biological and 405 DNA screening; 76 latent fingerprint; 58 firearm/toolmark; 26 miscellaneous; and 33 arson cases. Laboratory staff testified in 125 administrative hearings, depositions, or court hearings.

SIGNIFICANT ACCOMPLISHMENT

The Crime Laboratory Division moved into a new 19,000 square foot building on October 21, 2008. The Lab is the first building built exclusively for the Office of Attorney General. The building came in under budget and on time.

The Lab received 3,412 convicted/registered offender samples for the National DNA Database. Those samples resulted in 46 database hits.

CRIMINAL AND REGULATORY

The division processes all extradition requests received by the Governor. During the biennium, there were **79 extradition** requests processed.

The division conducts research on legal issues for local prosecutors and law enforcement officials, assists in the prosecution of criminal cases when requested by a local state's attorney, and provides legal services to various state agencies and officials, including the Department of Corrections & Rehabilitation, and ND Highway Patrol. The division provides general legal counsel to the ND POST Board and represents the Board in adverse license actions against peace officers.

Division attorneys have been actively involved in the risk assessment of sex offenders and those persons who committed offenses against children. The division participated in law enforcement and correctional training at the Law Enforcement Training Academy, and public presentations regarding offender risk assessment and notification of offender community presence.

The division also handles the legal issues associated with alcoholic beverage licensing, including enforcement actions for gaming and alcoholic beverage administrative rule and statutory violations.

The Licensing section issues licenses to alcoholic beverage retailers, wholesale and retail tobacco products dealers, transient merchants, coin operated amusement device operators, fair boards, polygraph examiners, charitable gaming operators, gaming manufacturers and distributors, and wholesale fireworks distributors.

❖ LICENSING REVENUE

Type of License	# Issued	Revenue
Beer License	3,100	\$245,691
Liquor License	2,879	226,712
Cigarette License	3,463	55,165
Coin License	235	83,875
Detection of Deception License	34	1,240
Fair Board License	20	1,000
Gaming/Distributor/Manufacturer	1,281	301,650
Transient Merchant License	121	24,200
Wholesale Fireworks	39	9,750
Total Licensing Revenue:	11,172	\$949,238

FINANCE & ADMINISTRATION

Finance and Administration is responsible for budget, payroll, and accounting matters, information processing, purchasing and other administrative functions.

BIENNIUM EXPENDITURES

Expenditures for the Civil Litigation, Natural Resources & Indian Affairs, State and Local Government and Criminal & Regulatory divisions are combined under “Legal” (Figure 1, next page).

Of the total expenditures, \$24.8 million (63%) was general fund monies, \$4.9 million was federal funds (12%), and \$9.8 million (25%) was special funds (Figure 2).

The costs associated with defending and prosecuting actions on behalf of the state by attorneys within the Office of Attorney General totaled \$2.2 million. The five legal divisions were responsible for these costs (Figure 3).

❖ SPECIAL ASSISTANT ATTORNEYS GENERAL

The Risk Management Division of the Office of Management and Budget spent \$306,478 in legal fees associated with actions against the state. These fees were paid to various special assistant attorneys general and for services provided by our office.

During the biennium an additional \$10.5 million was paid in either salaries or legal fees to over 200 special assistant attorneys general. Of these fees, an undetermined percentage was expended for litigation related services. Included within these costs were in-house counsel salaries and private law firm legal fees totaling \$2.17 million for services provided to North Dakota Workforce Safety & Insurance, an increase from \$1.99 million last biennium.

Total expenditures were approximately \$39.5 million. The office had 187.5 authorized FTEs and salary expenditures of \$21.2 million.

Figure 1.

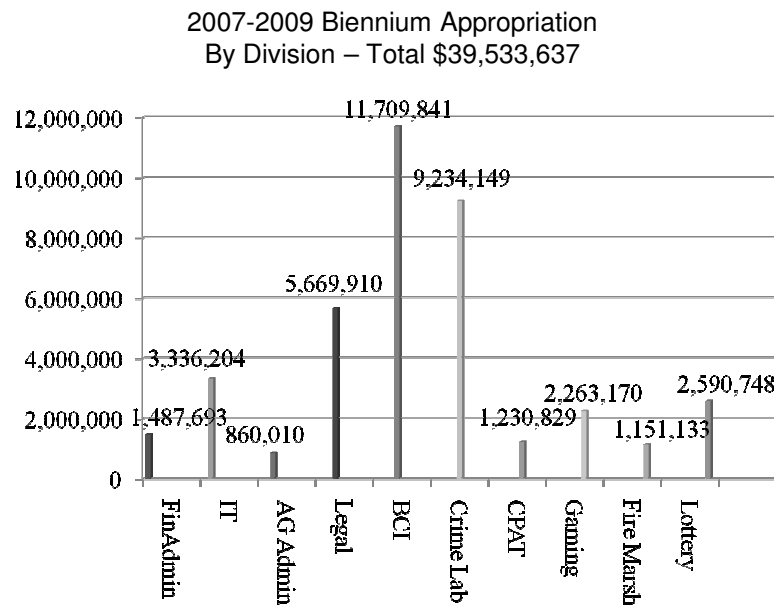


Figure 2.

**2007-2009 Biennium Expenditures By Funding Source
Total \$39,533,637**

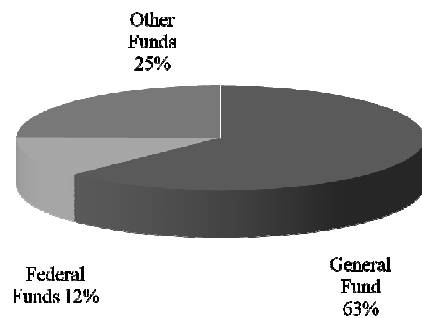
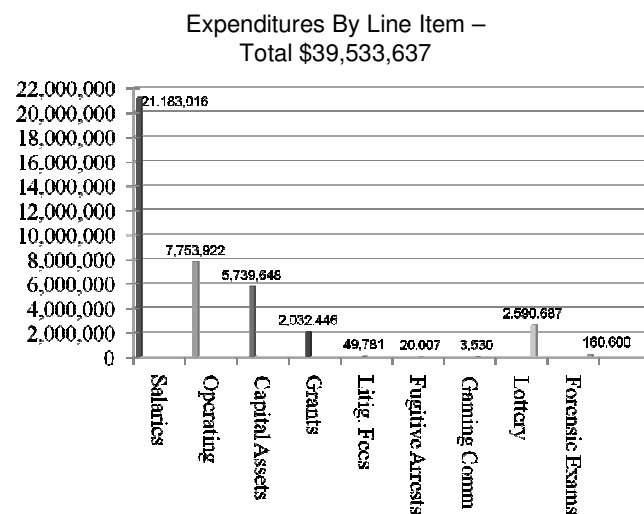


Figure 3.



FIRE MARSHAL

The division is headed by the State Fire Marshal. The main office is in Bismarck with field offices in Grafton, Fargo, Dickinson and Minot. The division conducts fire investigations to determine origin and cause. During the biennium, the division conducted 143 fire origin and cause investigations. Of these, arson was determined to be the cause in **20%** of the investigations.

The division provides services and education in areas including building plan review, fire prevention and life safety public education, fire investigation and inspections, and fire department certificates of existence. The division also provides technical assistance to entities throughout the state on fire code interpretations.

The Fire Marshal's emphasis on prevention is carried out through public education programs and training. Education programs are conducted to assist citizens in preventing fire and protecting themselves and their families should a fire occur. The division also provides specialized training in fire prevention, fire scene investigation, and hazardous materials response support.

To enhance the level of fire safety throughout the state, the division conducts fire inspections in public facilities, educational buildings, childcare facilities, state buildings, and at flammable material storage sites. During the biennium, the Fire Marshal staff conducted inspections at 230 schools, 141 fuel sites, 353 state buildings, 127 day care facilities, and 82 assembly sites.

The Fire Marshal's office manages the state's National Fire Incident Reporting System (NFIRS) and compiles state fire statistics from reports provided by local fire departments. Almost 67% of local fire departments now code and report incidents to NFIRS, which is well above the national average.

There were sixteen fire related fatalities during the biennium.

SIGNIFICANT ACCOMPLISHMENTS

- The Fire Marshal Division provided 39 classes for hazardous materials/weapons of mass destruction classes for 723 students.

GAMING

Continued revisions of the gaming administrative rules have clarified provisions and addressed statutory changes. The rules were developed through a cooperative effort among the industry's all volunteer Gaming Advisory Board, the Governor-appointed five-member State Gaming Commission, and the Gaming Division, and are available on the Attorney General's website.

GAMING UPDATE
The "Gaming Update" quarterly newsletter includes statistics on gaming, interpretation and updates of law and rules, calendar of events, and other special topics. It is distributed to organizations, distributors, manufacturers, the Gaming Advisory Board and Gaming Commission, and is available online

Among its many duties, the Gaming division regulates, enforces and administers charitable gaming, provides training, and performs audits and investigations of gaming organizations, and ensures compliance with tribal-state casino gaming compacts.

LEGISLATIVE CHANGES

The 2009 Legislative Assembly enacted five changes to the state's gaming statutes:

- HB 1194 changed the definition of an "eligible organization."
- HB 1317 decreased the excise tax on pull tabs from 4½% to 3%.
- HB 1367 increased the primary prize limit under a local permit and charity local permit.
- SB 2091 transferred responsibility for depositing gaming and excise taxes and the allocation of gaming and excise taxes to the Office of Attorney General.
- SB 2215 required that only licensed gaming organizations are subject to the payment of excise taxes and related interest, penalties, or estimated taxes.

❖ LOCAL LAW ENFORCEMENT GRANTS

The Legislature authorized local gaming enforcement grants. The grant allocation amount is 3% of the gaming and excise taxes paid, or \$77,125 per quarter, not to exceed \$617,000. The amount a city or county receives is proportionate to the level of its gaming activity. The total enforcement grants awarded were \$600,759.

❖ EDUCATION PROGRAM

The division conducted five group training sessions in five major cities, reaching 176 individuals representing 99 organizations. Individual training was provided to 51

individuals from 29 organizations, and post-audit training was given to 16 individuals from six organizations.

❖ **AUDIT PROGRAM**

The office conducted six comprehensive field audits and 2 distributor audits. In addition, 73 in-office and 24 limited reviews of organizations were completed. Internal control manuals of several large organizations were also evaluated and approved.

❖ **INDIAN GAMING**

The state has tribal-state casino gaming compacts to allow the five Indian tribes to conduct gaming operations at the following facilities:

- Dakota Magic Casino & Hotel, operated by the Sisseton Wahpeton Oyate Tribe, employing 485 people and containing 985 slot machines and 7 table games and a poker room.
- Four Bears Casino & Resort operated by the Mandan, Hidatsa, and Arikara Nation (Three Affiliated Tribes), employing 349 people and containing 637 slot machines, 18 table games and a poker room.
- Prairie Knights Casino & Resort, operated by the Standing Rock Sioux Tribe, employing 340 people and containing 611 slot machines and nine table games.
- Sky Dancer Casino & Hotel and Mini-Casino, operated by the Turtle Mountain Band of Chippewa Indians, employing 432 people and including 576 slot machines, 9 table games and a poker room.
- Spirit Lake Casino & Resort, an alcohol-free facility operated by the Spirit Lake Tribe, employing 450 people and containing 664 slot machines, 8 table games and a poker room.

❖ **OVERVIEW OF THE GAMING INDUSTRY**

An overview of the gaming activity for the fiscal years ended June 30, 2008, and June 30, 2009, follows:

During the biennium, there were approximately 950 active gaming sites, taking wagers of \$522 million, raising over \$33 million for charitable uses, and bringing in \$20.5 million in gaming and pull tab excise taxes.

OVERVIEW OF GAMING ACTIVITY

❖ FISCAL YEAR ENDED JUNE 30, 2008

	<u>Gross Proceeds</u>	<u>Prizes</u>	<u>Adjusted Gross Proceeds</u>
Bingo	\$33,119,959	\$25,581,214	\$7,538,745
Raffles	4,094,132	1,672,120	2,422,012
Pull Tabs (Jar Bar)	88,721,705	69,860,265	18,861,440
Pull Tabs (Dispensing Devices)	53,476,742	41,362,599	12,114,143
Club Specials, Tip Boards, Coin Boards, & Seal Boards	1,271,646	953,509	318,137
Punchboards	16,441	12,497	3,944
Sports Pools	115,132	92,606	22,526
Twenty-one	77,014,739	64,778,841	12,235,898
Calcuttas	144,326	120,999	23,327
Paddlewheels	153,790	79,414	74,376
Paddlewheels used with a table	4,904,799	3,624,391	1,280,408
Poker	<u>1,000,020</u>	<u>798,469</u>	<u>201,551</u>
Totals	\$264,033,431	\$208,936,924	\$55,096,507
Plus: Interest Earned & Cash Long (Short)			\$59,722
Less: ND Excise Tax			\$6,181,651
Federal Excise Tax			97,061
ND Bingo Excise Tax			963,793
			<u>\$7,242,505</u>
Total Adjusted Gross Proceeds			\$47,913,724
Less: ND Gaming Tax			\$3,273,863
Allowable Expenses			27,646,865
Total Deductible Expenses			<u>\$30,920,728</u>
Net Proceeds Earned			\$16,992,996
Eligible Use Contributions			\$17,515,919

OVERVIEW OF GAMING ACTIVITY

❖ FISCAL YEAR ENDED JUNE 30, 2009

	<u>Gross Proceeds</u>	<u>Prizes</u>	<u>Adjusted Gross Proceeds</u>
Bingo	\$32,208,486	\$25,360,290	\$6,848,196
Raffles	4,195,945	1,735,460	2,460,485
Pull Tabs (Jar Bar)	83,267,227	65,634,590	17,632,637
Pull Tabs (Dispensing Devices)	56,827,576	43,971,636	12,855,940
Club Specials, Tip Boards, Coin Boards, & Seal Boards	1,025,868	728,081	297,787
Punchboards	14,324	9,652	4,672
Sports Pools	110,760	90,226	20,534
Twenty-one	74,349,285	62,779,608	11,569,677
Calcuttas	216,080	184,016	32,064
Paddlewheels	146,200	81,188	65,012
Paddlewheels used with a table	5,061,029	3,777,101	1,283,928
Poker	<u>883,345</u>	<u>704,080</u>	<u>179,265</u>
<u>Totals</u>	<u>\$258,306,125</u>	<u>\$205,055,928</u>	<u>\$53,250,197</u>
Plus: Interest Earned & Cash Long (Short)			\$43,571
Less: ND Excise Tax			\$6,080,768
Federal Excise Tax			95,404
Bingo Sales Tax			937,258
			<u>\$7,113,430</u>
Total Adjusted Gross Proceeds			\$46,180,338
Less: ND Gaming Tax			\$3,059,621
Allowable Expenses			<u>26,708,347</u>
Total Deductible Expenses			\$29,767,968
Net Proceeds Earned			\$16,412,370
Eligible Use Contributions			\$19,605,483

INFORMATION TECHNOLOGY

The IT staff maintains approximately 20 different business applications for the agency.

Staff is on call 24 hours a day, 7 days a week.

During the biennium the Information Technology (IT) division continued to provide technical services and support for the agency's 12 locations across the state, as well as five locations in Bismarck. Over 5,400 calls for service came into the IT help desk during the biennium. These calls resulted in IT staff providing network support, troubleshooting, software installation, equipment replacement, creation of new computer applications, and enhancement of existing applications.

In addition the IT staff maintains the website for the Office of Attorney General, as well as the Sex Offender web site which shares information with the National Dru Sjodin web site, and facilitates information sharing from agency databases with law enforcement across the state through State Radio and the Criminal Justice Information Sharing (CJIS) initiative.

SIGNIFICANT ACCOMPLISHMENTS

- IT worked with BCI to implement a pilot 24-7 Sobriety Program. The division received a version of the software from South Dakota, but was required to make many enhancements to meet North Dakota security requirements, as well as to address the state's specific rules and court procedures.
- The IT division worked with Motorola, BCI, South Dakota and Minnesota to upgrade the Livescan software and replace Livescan units. The project consumed 2270 man-hours for IT and an additional 975 hours from consultants.
- IT worked with the ND Supreme Court and CJIS to route protection orders updates through CJIS to our office. We also worked with CJIS to allow law enforcement to enter the served date of the order through CJIS and receive it in our office as an update to a protection/restraining order. The CJIS project took IT staff 720 hours to complete.

LOTTERY

The North Dakota Lottery regulates, enforces and promotes the state's lottery.

The Lottery selects and licenses retailers; trains retailer employees; develops administrative rules and proposes legislation; investigates allegations of unlawful activity; assists retailers in promoting lottery games; pays high-tier prizes to players; ensures that retailers and players comply with the lottery law and rules; and provides full accountability to the public and Legislature.

The Lottery conducts four multi-state games: POWERBALL®, HOT LOTTO®, WILD CARD 2® and 2BY2®. The Lottery's product mix of games provides jackpots starting from \$22,000 to \$20 million, and overall odds of winning a prize on a \$1 play ranging from 1 in 3.59 to 1 in 35.11.

The number of retailers and sales percent, by type, for the biennium are:

No.	Type	Sales %
302	Convenience Store	71.4
61	Grocery Store/Supermarket	23.1
6	Gas/Service Station	.7
17	Truck Stop/Plaza	3.4
14	Other (i.e. Bar, Drug Store)	1.4

❖ MARKETING PROMOTIONS

The Lottery conducted several marketing promotions during the biennium, including Powerball Power Play 10X, 5th Anniversary Cash Dash, Father's Day Subscription Gift-Giving, Annual Holiday Subscription Gift-Giving, Wild Card 2 – One Wild Deal, 2by2 Feast on This Multi-draw, and Hot Lotto Get Three Plays.

During the biennium:

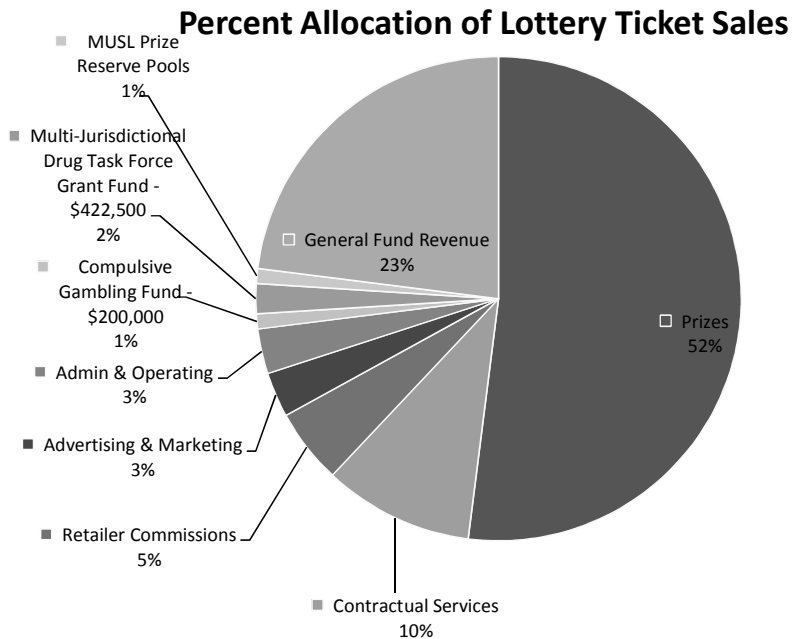
The lottery generated total operating revenue of \$44 million, **paid out \$22.67 million in prizes**, and generated net proceeds of \$11.81 million.

The Lottery transferred **\$11,055 million to the state general fund**, \$845,000 to the multi-jurisdictional drug task force grant fund, and \$400,000 to the compulsive gambling prevention and treatment fund.

FACEBOOK
Be a Facebook Fan of the
North Dakota Lottery!
The Lottery's FACEBOOK
page is posted with the
latest winners, jackpots
and promotions.

LOTTERY SALES

The chart below shows a breakdown of each \$1 of sales.



SIGNIFICANT ACCOMPLISHMENTS

During the biennium, the Lottery:

- Added the Triple Sizzler feature to the Hot Lotto game. To play the Triple Sizzler option, a player pays an additional one dollar per play for an opportunity to multiply the player's set prize (excluding the jackpot prize) by 3.
- Added the 7-day multi-draw Tuesday Double Prize feature to the 2by2 game. To play the Tuesday Double Prize option, a player must purchase a 7-day multi-draw play for an opportunity to double all prizes won on Tuesday.
- Developed a lottery coupon program to promote all four lottery games. The coupons, which are redeemable for lottery tickets at any of the 400 lottery retailers, are provided to radio stations to promote high jackpots, which reduces advertising expenses.

NATURAL RESOURCES/INDIAN AFFAIRS

North Dakota's natural resources are vital to the state's economy and to the lifestyle and well-being of its citizens. The Attorney General, as a member of boards that oversee natural resources, plays an important role in their wise use. In addition, the division provides legal advice to state agencies with responsibilities for these resources.

The division assists the Land Department in managing state-owned lands and minerals; the State Engineer in regulating the appropriation of water, dams, dikes, and drains, and managing the beds of navigable rivers and lakes; the Industrial Commission in regulating the exploration and development of mineral resources and administering grant programs for the lignite and oil and gas industries; the Health Department in protecting our environment; the Game and Fish Department in managing wildlife and wildlife habitat; the Water Commission in developing water resources; and the Parks and Recreation Department in managing public recreation areas.

The division also administers the state's anti-corporate farming law and represents the Department of Agriculture, the Board of Animal Health, Wheat Commission, and other related agricultural agencies.

In addition, the division advises state and local officials on Indian law issues.

The Natural Resources & Indian Affairs Division authored and edited portions of the Conference of Western Attorneys General 4th Edition of the "American Indian Law Deskbook."

ENVIRONMENTAL PROTECTION

During the biennium, the division authored legal briefs supporting persons injured by the 2002 Canadian Pacific derailment in Minot in their suits against CP Rail. One brief, filed with the U.S. Supreme Court, was joined by 19 other states. Other amicus briefs were filed with the Eighth Circuit Court of Appeals. An example of other work in which the division assisted the Health Department is the \$100,000 settlement of a saltwater spill by an oil company, \$55,000 of which was paid the state, with the remainder suspended under specified conditions.

❖ **EPA-CLEAN AIR ACT**

The division continued its work involving the Environmental Protection Agency's interpretation of the Clean Air Act and its application to North Dakota and its power plants. The EPA instituted a national rulemaking in June of 2007, but abandoned the rulemaking in 2008.

The division intervened and filed briefs in several suits filed in the U.S. District Court for the District of Columbia by eastern states challenging EPA decisions applying the Clean Air Act. The division became involved in the litigation in support of EPA to protect North Dakota interests.

WATER

Besides handling the day-to-day legal work concerning North Dakota's water resources, North Dakota was involved in a number of unique issues. In early 2009 the State of Missouri filed suit against the federal government to stop the Northwest Area Water Supply project. The division intervened in that suit and is now, in cooperation with the federal government, preparing to ask the court to dismiss both lawsuits.

Another trans-boundary dispute involves a suit filed in a Canadian court by a political subdivision of Manitoba alleging that the state along with local entities in northeastern North Dakota have, through water management practices, exacerbated flooding in Manitoba. The case was dismissed.

Lastly, the States of Montana, Wyoming, and North Dakota are parties to the Yellowstone River Compact. Montana believes that Wyoming is wrongfully limiting the flow to Yellowstone tributaries and filed suit with the U.S. Supreme Court. Montana named North Dakota as a defendant because the state is a compact signatory. The Supreme Court assigned a Special Master to preside over the case and file a report and recommended decision. The division is involved to ensure that North Dakota's interests are not compromised.

The division successfully defended the state at trial and in front of the ND Supreme Court in an inverse condemnation action brought by numerous landowners around Devils Lake claiming over \$25 million in damages for the lake's rise that inundated their land.

AGRICULTURAL LAW

The division continued to assist the Agriculture Department in administering its many programs. It also represented the state in a suit by Farmers Union and the Dakota Resource Council challenging the constitutionality of a statute dealing with the wheat check-off. The district court's dismissed the suit, a ruling affirmed by the North Dakota Supreme Court. The division also assisted the Board of Animal Health in such matters as livestock import violations, feral swine, abandoned animals, and humane treatment of animals.

STATE LAND AND MINERALS

As a member of the Board of University and School Lands, the Attorney General helps manage approximately 712,000 acres of state-owned land and 1.8 million acres of state owned minerals. Income generated from these resources supports the state's schools. The "Bakken Play" and rapid expansion of the state's oil and gas industry directly affects the Land Board and its minerals management work, requiring the division's active involvement.

The division presided over more than 1,000 oil and gas administrative hearings.

INDIAN ISSUES

The division provided legal advice on such issues as the role of state law enforcement officers over Indians and over the on-reservation activities of Indians as well as non-Indians. For example, the division represented the Bank of North Dakota against tribal members in the Fort Berthold Tribal Court regarding an on-reservation foreclosure and in the Turtle Mountain Tribal Court in a loan collection action.

CORPORATE FARMING

The division is responsible for administering the state's corporate farming law. The division represents the state in an action against a nonprofit entity, Crosslands, Inc., that acquired farmland in violation of the corporate farming law and who challenged the law's constitutionality. Crosslands' effort to get the issue before a federal court failed. Crosslands' constitutional challenge was rejected

GAME AND FISH
The division helped the Game & Fish Department enforce new legislation regulating commercial guides and outfitters and, as a result of the department's heightened concern about water safety, the division handled a number of boating under the influence (BUI) cases

by a state district court. The case is on appeal to the N.D. Supreme Court, but since Crosslands did not appeal the constitutional ruling the appeal concerns other issues.

NATIONAL GRASSLANDS

The United States Forest Service has taken a number of significant management initiatives affecting the Little Missouri and Sheyenne River National Grasslands. The division has monitored these events and submitted formal comments and administrative appeals on some of them, such as proposed revisions to the Grasslands Management Plan.

Also, in 2001, the division filed suit challenging the Forest Service's "off highway vehicle" policy, its roadless rule, and its failure to recognize the applicability of the state's section line right-of-way law to federal land. The suit was settled in 2007. The settlement's primary feature establishes a process by which the Forest Service and local entities will share information and seek to resolve their disputes over road issues, a process that is ongoing.

CLIMATE CHANGE

The division played a lead role in drafting groundbreaking legislation enacted by the 2009 Legislature that establishes a regulatory regime for the underground storage of carbon dioxide. It also closely monitored and assisted the Industrial Commission in submitting comments on action by the Minnesota Public Utilities Commission seeking to reduce the use of power produced by coal burning, carbon dioxide emitting plants, an action that has consequences for North Dakota coal and power industries.

STATE AND LOCAL GOVERNMENT

LEGAL SERVICES

The State and Local Government division provides day-to-day legal services to 65 state agencies, boards, and commissions. Division attorneys represent multiple agencies and are required to be experts in a wide variety of practice areas. In addition to providing legal services, attorneys from the division assisted agencies and members of the Legislative Assembly by drafting bills and amendments, explaining the ramifications of proposed legislation and testifying before legislative committees when requested.

By statute the Office of Attorney General must review all administrative rules adopted by state agencies and boards for legal sufficiency and to ensure that proper procedures have been followed. The division reviewed 72 sets of rules during the biennium.

ATTORNEY GENERAL OPINIONS

One of the Attorney General's most important statutory duties is issuing Attorney General Opinions on questions of law and on questions relating to open records and meetings. The attorneys within the State and Local Government Division are also primarily responsible for researching and drafting these opinions.

LEGAL OPINIONS

The Attorney General is frequently asked for legal opinions by state legislators, state officials, county state's attorneys, city attorneys, city governing bodies, water resource boards, and soil conservation districts. These opinions guide the actions of public officials until the courts decide the issue. During the biennium the Attorney General issued 37 legal opinions. The Attorney General issued 12 opinions to legislators, seven to state's attorneys, six to city attorneys, and 12 to state agencies.

The Attorney General issues opinions on questions of law related to matters involving state statutes, the state constitution, and matters having statewide significance.

OPINIONS
Attorney General Opinions
from 1942 are available
online at www.ag.nd.gov
on the "Legal Opinions"
page.

Individual copies of opin-
ions issued prior to 1942
may be requested by con-
tacting the Office of Attor-
ney General at (701) 328-
2210, or by e-mail to
ndag@nd.gov.

❖ **SIGNIFICANT OPINIONS**

- 2007-L-11: A compensation program which distin-
guishes between the National Guard and Reserve
and active duty members does not violate the Equal
Protection Clause of the Fourteenth Amendment
because the distinctions were not based on unlawful
criteria. While the Equal Protection Clause prohib-
its discrimination for inherently suspect reasons
such as race, it permits rational distinctions between
groups.
- 2007-L-16: The Governor does not have authority
to remove members of the Workforce Safety & In-
surance board of directors. Although generally the
power to appoint public officials would include the
power to remove those officials, there are excep-
tions to the general rule where the terms of the offi-
cials are fixed by statute or where the officials are
required to be selected from a list of candidates pro-
vided by outside entities. In those instances, both of
which are present with respect to members of the
WSI board of directors, the Governor does not have
the authority to remove them.
- 2008-L-05: The Fargo Public School District has
statutory authority to use combined building fund
levies to finance construction of a new high school.
A non-profit building authority is not generally sub-
ject to the same limitations on building and con-
struction as a school district.
- 2009-L-08: The state constitution grants the Gover-
nor the authority to present information and propose
recommended legislation to the Legislative Assem-
bly. The legislature has the power to approve, dis-
approve, or amend these recommendations and in-
dividual legislators or groups of legislators may in-
troduce their own appropriation bills or offer
amendments to those submitted by the executive
branch. The legislature does not have free rein to
encroach upon the Governor's constitutional power,
but the Governor's budget authority is not totally
exclusive.

OPEN RECORDS AND MEETINGS

Between July 1, 2007, and June 30, 2009, the office issued 44 opinions based on alleged violations of the open records or open meetings laws. The division also handled a large number of telephone calls from public entities and citizens regarding open records and meetings requirements. Responding over the telephone in many cases eliminated possible violations or opinion requests.

❖ **SIGNIFICANT OPINIONS**

- 2007-O-14: An exchange of emails among a quorum of the governing body that involves a matter pending before the governing body may meet the definition of a "meeting" under the state's open meetings law.
- 2007-O-15: Committees created by a governing body are subject to the open meetings laws.
- 2008-O-07: E-mails sent by public entities relating to public business are subject to disclosure even if the individuals use private e-mail accounts.
- 2008-O-15: The Fargo Public School District and Fargo Park District violated the open records laws by not providing copies of e-mails that were on the private computers of their appointees serving on the Board of Directors of Metro Sports Foundation, Inc because the appointees were acting as agents of the public entities and the e-mails related to public business.
- 2008-O-19: When Foster county denied a request for electronic records because the requester was not a resident of the state, and then claimed it would provide only a hard copy, for which it estimated excessive charges and almost a year to provide the records, it violated the law.
- 2009-O-08: The University of North Dakota's Alumni Association and the UND Foundation are both agents of UND and therefore violated the open records laws by refusing to provide a copy of a contract with a software vendor.

Not sure if a record or meeting is open?

Look on the Open Records and Open Meetings link of the Attorney General's website for:

A Summary of Open Records, giving examples of open, exempt and confidential records along with the statutory authority; and

a Summary of Open Meetings, setting out the steps for noticing and holding a general, special or sub-committee meeting.

PUBLICATIONS OF THE OFFICE OF ATTORNEY GENERAL

The Office of Attorney General makes available a variety of forms and publications, from informational pamphlets explaining consumer rights to administrative rules and license applications for gaming organizations. For convenience, these publications are available online from the

NEWS/PUBLICATIONS

❖ **NEWS**

- News Releases
- Too Good To Be True...

❖ **PUBLICATIONS**

- Attorney General, Office of
- Attorney General Opinions
- Choosing a Contractor
- Concealed Weapons Permit
- Disaster Scams
- Do Not Call
- Document Retention
- Eminent Domain - Landowner Rights
- Fair Credit Reporting Act
- Fair Debt Collections Practice Act
- File a Complaint About
- Identity Theft
- Junk Mail
- Lemon Law, North Dakota
- Liability of State Employees
- Meth
- Network Marketing/Pyramid Schemes
- Online Safety Tips
- Open Records and Open Meetings
- Satellite and Cable Programming
- Scams, Shams & Flimflams
- Security Freeze
- Security Freeze-Brochure
- Sex Offender Information
- Small Claims Court in North Dakota
- Tenant Rights
- Your Credit Score
- What Teenagers Need to Know about Sex and the Law

FORMS

❖ **BCI**

- Criminal History Authorization
- Application for Reduction in Fee
- Non-Criminal Justice Request
- Offender Registration

❖ **CONSUMER PROTECTION**

- Consumer Complaint

❖ **FIRE MARSHAL**

- Certificate of Fire Department Existence
- Training Report
- Assembly Occupancy Inspection Form
- Aboveground Fuel Storage Tank Pre-Installation Application - Fuel Dispensing Sites
- Adjunct Instructor Expense Form
- Liquefied Petroleum Gas Pre-Installation Checklist
- Law Enforcement Training Roster

❖ **GAMING**

- Gaming and Tax Returns
- Bingo
- Bingo Dispensing Device
- Calcutta
- Club Special
- Combined Concept
- Long Form Tax
- Paddlewheel W/Table
- Paddlewheel W/O Table
- Poker
- Prize Board Dispensing Devices
- Prize Board
- Pull Tab Dispensing
- Pull Tab
- Pull Tabs By Deal Method
- Raffle
- Short Form Tax Return
- Sports Pool
- Twenty-One

Request for Record Check
Designated Usage of Funds
Evaluation of Video Surveillance Equipment

❖ **LICENSING**

Alcoholic Beverage License
Amusement Games
Local Gaming Permit/Application/Report
Fireworks
Gaming License Application
Manufacture/Distribute Gaming Equipment
and Supplies
Polygraph
Tobacco
Transient Merchant

❖ **OTHER**

Forensic Medical Exam Reimbursement
Application to Limit Liability of Vendor
Prosecution Witness Fee Reimbursement
Report of Expenditures

REPORTS

Law Report
Attorney General Biennial Reports
Crime & Homicide Reports
Comprehensive Status and Trends Report

MANUALS

❖ **BCI**

Concealed Weapons
Model Law Enforcement Domestic Violence
Model Law Enforcement Involved Domestic
Violence
Offender Registration Procedures

❖ **STATE & LOCAL GOV'T**

Administrative Rules Manual
Contract Drafting Manual
Open Records and Meetings Manuals

❖ **CRIME LAB**

Chemical Test Operator - Spring 2009
Chemical Test Operator 2007/2008
Chemical Test Operator 2006/2007
Chemical Test Operator 2005/2006
Chemical Test Operator 2004/2005
Chemical Test Operator 2003/2004

S-D2 Operating Instruction
Sample Retention/Disposal

INFORMATION-DIVISION

❖ **BCI**

Concealed Weapons Permits
Criminal History Records
Law Enforcement Training and Licensing
Methamphetamine
Offender Registration
Cold Case Unit

❖ **CONSUMER PROTECTION**

Consumer Rights and Information
Security Freeze
Do Not Call
Free Credit Reports
Identity Theft
Internet Safety

❖ **FIRE MARSHAL**

Fireworks Safety
Guidelines for Requesting Assistance

❖ **GAMING**

Gaming Newsletter
Gaming Commission & Advisory Board
Members
Sample Gaming Compact
Rules and Regulations
License Holders

❖ **LICENSING**

Alcoholic Beverage License
Amusement Games
Local Gaming Permit/Application/Report
Fireworks
Gaming License Application
Manufacture/Distribute Gaming Equipment
and Supplies
Polygraph
Tobacco
Transient Merchant
License Holders

❖ **STATE & LOCAL GOV'T**

Opinions
Open Records & Open Meetings Opinions

